RECENT IMPORTANT DECISIONS

AGENCY—RATIFICATION—KNOWLEDGE NECESSARY.—Defendant, a married woman, was proprietor of a drug store, and her husband was her general agent in charge of the same. Plaintff's agent, while endeavoring to sell a bill of goods to the agent of defendant, was expressly notified by defendant that she would not buy any goods from plaintiff's house, and told him not to sell any goods to her agent. Notwithstanding this express notification and prohibition, goods were sold and were received by defendant's agent, placed on the shelves of the store and disposed of in the regular course of trade. An action was brought for the price of these goods. The question was, whether under the circumstances, there was a ratification of the transaction. The lower court instructed the jury in effect, that if the goods were delivered into the pharmacy and were sold by the employes of the defendant and the proceeds were put into her possession, there was a ratification by her. *Held*, that this instruction was erroneous, on the ground that in order to constitute a ratification it must appear that defendant had knowledge of all the material facts, and, under the circumstances of this case, a receipt and sale of the goods by her agent would not bind defendant. *Schollay v. Moffitt-West Drug Co.* (Colo.) 67 Pac. Rep. 182.

There may be a ratification by receiving the profits of an unauthorized transaction; but knowledge of all the material facts is essential. *Craighead* v. *Peterson*, 72 N. Y. 279; *Herring* v. *Skaggs*, 73 Ala. 446. In this case the agent of the plaintiff had been expressly notified not to sell goods to the defendant's agent; therefore plaintiff was charged with notice not to sell. *Flower* v. *Elwood*, 66 Ill. 438. There was no reason to believe that this prohibition had been withdrawn, and by acting in disregard of it and selling the goods, a fraud was perpetrated upon the defendant. Where there is collusion between the agent and the party seeking to hold the principal, notice to the agent is not notice to the principal. *Innerarity* v. *The Bank*, 139 Mass. 332.

AGENCY—UNDISCLOSED PRINCIPAL—DEFENCE AGAINST AGENT.—D. F. Holden, acting really as the agent of one D. O. Coles, but without disclosing that fact, purchased in his own name from the defendant railroad company, a mileage book, good for use by those only whose names should be inserted on the cover by defendant's agent. Plaintiff signed the contract in the back part of the book in his own name, but the defendant's agent in inserting the name on the cover wrote it by mistake "A. F. Holden." Plaintiff used the book for one journey, and then delivered it to Coles, the true owner, paying him for the mileage used. Afterwards, in order to make another journey on the ticket, plaintiff hired it of Coles, and Coles, without authority, inserted the name of the plaintiff's daughter on the cover so that she might go with him. When plaintiff presented the book in payment of fare for himself and daughter, the conductor refused to receive it, and caused the plaintiff's arrest. In an action by the plaintiff to recover damages, *Held*, that he could not recover. *Holden* v. *Rutland Ry. Co.* (1901) Vt., 50 Atl. Rep. 1096.

The court adopted the well known rule that upon contracts, not under seal, made by an agent for an undisclosed principal, either the principal or the agent may sue; (MECHEM on AGENCY, § 755; DICEY on PARTIES, 136; *Sims* v. *Bond*, 5 B. & Ad. 393;) but applied the other rule equally well settled, that if the agent sues in his own name, the defendant may make any defense which he may have, either against the agent himself or against the principal. (MECHEM on AGENCY, § 762; DICEY, PARTIES, 142; 2 SMITH'S LEAD. CAS. 428.) The insertion of the name of the plaintiff's daughter was a material alteration, and was designed to promote a fraud upon the defendant for the plaintiff's advantage. This defence being available against the plaintiff in the action in his own name, he could not recover.

BAILMENTS—ACTION BY BAILEE AGAINST THIRD PERSON.—In an action against a third person by whose negligence property in the hands of a bailee was destroycd, *Held*, that the bailee can recover the value of the goods, on the ground that possession is title both as regards the right to bring the action and as to the quantum of damages; though previous to such recovery he would have a good answer to an action by the bailor, the liability over of the bailee to the bailor being not the ground of the bailee's right to recover but a consequence of the right. *The Winkfield*, [1902] Pr. Div. 42, 71 L. J. R., P. D. 21.

In HOLMES' COMMON LAW, ch. v. it is said the original rule was that a bailee was answerable to the owner because he was the only person who could sue; but in course of time, by a peculiar inversion of reasoning, it came to be said that the bailee could sue because he was answerable over to the bailor; while in POLLOCK AND MAITLAND'S HISTORY OF ENGLISH LAW, Vol. II. p. 70, it is said that, as between these two old rules, there was perhaps no logical priority. See also HOLLAND, JURISPRUDENCE, 5th ed., note to p. 171. The principal case, it seems then, is probably historically sustained. It distinctly overrules *Claridge* v. *S. Staffordshire Tramway Co.* [1892] 12 Q.B. 422, which was based on the "inverted" rule, and returns to what previously was regarded as the English doctrine. *Sutton* v. *Buck*, 2 Taunt. 302; *Burton* v. *Hughes*, 2 Bing. 173; *Swire* v. *Leach*, 18 C. B. (N. S.) 479. It is in accord also with the American decisions. SEDGWICK, DAMAGES. 8th ed. § 76-8; *White* v. *Webb*, 15 Conn. 302; *Ullman* v. *Barnard*, 7 Gray (Mass.) 554.

BANKRUPTCY—HOMESTEAD EXEMPTION—STATE LAW NOT ENFORCED.—A, gave promissory notes in which he waived his homestead exemption. Then he went into bankruptcy. *Held*, that the claims of the creditor were unenforceable against the homestead, though a waiver of a homestead exemption in a promissory note was admitted to be valid in Georgia under the constitution of that state. *In re* Swords, (District Ct., N. D., Ga.), 112 Fed. Rep., 661.

BANKRUPTCY—HOMESTEAD EXEMPTION.—A, who was insolvent, took money from his business and invested it in a homestead. Later, he became bankrupt. Then he claimed his homestead exemption, under the state law, as permitted by the Bankruptcy Act, Chap. III, § 6. *Held*, that the exemption could not be sustained, on the ground that the claimant should not have taken money from his business for the purpose of securing a homestead, knowing he was insolvent. *McGahan* v. *Anderson* (C. C. A. 4th circuit,) 113 Fed. Rep. 115.

The decision is at variance with the practically unanimous holdings of the state courts. Waples, Homestead and Exemptions, p. 508: "The doctrine that homestead may be selected, to defeat creditors, from property liable for debts due them, has been so pointedly laid down that it must be stated here, however antagonistic to just principles it may appear. The profession cannot disregard what rests on the principle of *stare decisis*, even though the courts, in the exposition of statutes, admit that principles of equity have no control." *Jacoby* v. *Distilling Co.*, 41 Minn. 227; citing numerous cases, among them *Tucker* v. *Drake*, 11 Allen, 145; *O'Donnell* v. *Segar*, 25 Mich. 367. WAPLES further says that "creditors are deemed to have notice that such setting apart may be done, and therefore to have trusted their debtor with such understanding. In the selection by the debtor or the officer, therefore, there is no fraud."

BILLS AND NOTES—CASHIER'S CHECK—INDORSED FOR ILLEGAL CONSIDERATION.—The defendant issued to the plaintiff a cashier's check, which plaintiff indorsed and delivered to a gambler in a gambling transaction. Defendant paid the check to the indorsee after notice of the defect in his title. Action for amount of the check. *Held*, that plaintiff was entitled to recover. *Drinkall* v. *State Bank*, (N. Dak.) 88 N. W. Rep. 724.

This holding is striking in view of the multitude of cases supporting the well established principle that the courts will leave the parties to a prohibited transaction where their unlawful acts have placed them. The applicatiou of this principle where securities are given is seen in the following cases: Where an assignment of a mortgage was made in payment of a gaming debt it was held that, by the assignment, the gaming contract was fully executed and would not defeat a foreclosure of the mortgage. *Reed* v. *Bond*, 96 Mich. 134, 55 N. W. Rep. 619. A bill in equity will not lie to compel the surrender or cancellation of a note and mortgage given for an illegal consideration. *Atwood* v. *Fisk*, 101 Mass. 363, 100 Am. Dec. 124. Where a bank check is given in payment of losses incurred in a gaming contract, equity will not grant relief, either by enjoining the bank from paying the check, or ordering it cancelled and surrendered. *Kahn* v. *Walker*, 46 O. St. 195, 20 N. E. Rep. 203.

CARRIERS—STREET RAILWAY—TRACK USED BY ANOTHER COMPANY.—Plaintiff's decedent was riding on defendant's tracks on a car owned and operated by another street railway, which by a traffic arrangement with the defendant ran its cars on the latter's tracks: and while standing on the platform was struck by a tree standing within 1 ft. 7 in. of the rail., *Held*, Non-suit proper, as decedent was not a passenger on defendant's road, and sustained no contractual relations to it by virtue of the traffic arrangement. *Sias* v. *Rochester Ry. Co.* (N. Y.) 62 N. E. Rep., 132.

If a company's track is so close to an obstruction as to endanger the safety of the travelling public, the company neglects its duty to its own passengers and employees if they be injured